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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEFFREY W. HANSON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

TMX Finance LLC dba TITLE MAX OF
NEVADA, INC.; TMX Finance of Nevada,
Inc.; and TITLEMAX OF NEVADA, INC.
d/b/a as TITLEMAX and or TITLEMAX
OF NEVADA,

Defendants.

CASE NO. 2:18-cv-00616-RFB-CWH

**DEFENDANT'S MOTION TO
(1) COMPEL ARBITRATION AND
DISMISS, OR ALTERNATIVELY,
(2) STAY PROCEEDINGS AND STRIKE
ALL CLASS ALLEGATIONS**

Defendant TitleMax of Nevada, Inc., ("Defendant")¹ moves to compel arbitration of the individual claims brought by Plaintiff Jeffrey W. Hanson ("Plaintiff") and to dismiss this action without prejudice. In the alternative to dismissal, Defendant moves to stay the action pending arbitration of Plaintiff's claims, and to strike all class allegations. This Motion is based upon Federal Rule of Civil Procedure 12(b), the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"), Local Rule 7-2, the Declaration of Elizabeth Evans ("Evans Decl.") and the exhibits

¹ Plaintiff voluntarily dismissed Defendants TMX Finance LLC and TMX Finance of Nevada, Inc. *See* ECF No. 6.

1 attached thereto, the documents on file in this action, and the following points and
 2 authorities.

3 4 POINTS AND AUTHORITIES

5 **I. INTRODUCTION**

6 Plaintiff asserts claims on behalf of himself and a putative class for alleged
 7 violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*
 8 (“TCPA”). Plaintiff’s individual claims must be arbitrated pursuant to the mandatory
 9 arbitration clause contained in the Credit Application (“Application”) and in the Title
 10 Loan Agreement, Promissory Note and Security Agreement (the “Loan Agreement”) that he entered into with Defendant. In addition, the Application and Loan
 11 Agreement preclude Plaintiff from asserting claims on behalf of a putative class.
 12 Defendant therefore seeks an order from this Court to compel arbitration of
 13 Plaintiff’s individual claims only, and to either dismiss this action, or in the
 14 alternative, stay the action pending arbitration of Plaintiff’s claims and strike all
 15 class allegations.²

16 17 **II. STATEMENT OF FACTS**

18 **A. Plaintiff Agreed To Arbitration Of His Claims**

19 On or about November 2, 2017, Plaintiff completed the Application for a short-
 20 term loan with Defendant. Ex. 1, Evans Decl., ¶ 5 (attached hereto). The
 21 Application states, in pertinent part:

22 **NOTICE OF ARBITRATION AGREEMENT: EACH APPLICANT**
 23 **WHO SUBMITS A FULL CREDIT APPLICATION WILL BE**
 24 **REQUIRED TO ENTER INTO A SEPARATE WAIVER OF JURY**
 25 **TRIAL AND ARBITRATION AGREEMENT (THE “ARBITRATION**
AGREEMENT”) WITH TITLEMAX AS A CONDITION TO
SUBMITTING THIS CREDIT APPLICATION AND IN
CONSIDERATION OF TITLEMAX ACCEPTING AND CONSIDERING

26
 27 ² The Loan Agreements of all putative class members similarly contain the
 28 Arbitration Clause, and Defendant reserves all rights under the Arbitration Clause with respect to these putative class members at later stages of this action, or in any independent action.

1 THIS CREDIT APPLICATION. YOU MAY OPT-OUT OF
 2 ARBITRATION AS DESCRIBED IN THE ARBITRATION
 3 AGREEMENT. ARBITRATION REPLACES THE RIGHT TO GO TO
 4 COURT, INCLUDING THE RIGHT TO HAVE A JURY TRIAL, TO
 5 ENGAGE IN DISCOVERY (EXCEPT AS MAY BE PROVIDED FOR IN
 6 THE ARBITRATION RULES), AND TO PARTICIPATE AS A
 REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS
 OR IN ANY CONSOLIDATED ARBITRATION PROCEEDING OR AS
 A PRIVATE ATTORNEY GENERAL. OTHER RIGHTS THAT YOU
 WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE
 UNAVAILABLE IN ARBITRATION.

7 Ex. 1, Evans Decl., at Ex. 1-A, p. 3 (Additional Terms and Conditions of This Credit
 8 Application).

9 The Application was approved the same day, resulting in the Loan Agreement
 10 between the parties. Ex. 1, Evans Decl., ¶ 6. The Loan Agreement includes an
 11 arbitration clause, and states, in pertinent part:

12 WAIVER OF JURY TRIAL AND ARBITRATION CLAUSE: By signing
 13 below, Lender and I agree to this Waiver of Jury Trial and Arbitration
 Clause, including a waiver of class actions (the “*Clause*”). . . This Clause
 is a legally binding part of this Note.

14 *****

15 In this Clause, “*Dispute*” has a broad meaning. “*Dispute*” includes all
 16 claims and disagreements related to my application, this Note, the
 Vehicle, the Loan, or my dealings with Lender. It includes claims and
 17 disagreements about any prior applications and agreements. It includes
 extensions, renewals, refinancing, and payment plans. It includes
 18 claims related to collections, privacy, and customer information. It
 includes claims and disagreements that usually would be resolved in
 19 court. “*Dispute*” also includes claims and disagreements I have with
 Related Parties.

20
 21 Ex. 1, Evans Decl., at Ex. 1-B, pp. 4-5 (the “Arbitration Clause”).

22 As part of the Arbitration Clause, Plaintiff also agreed to “give up [his]
 23 right” to:

- 24 1. Have a jury decide Disputes.
- 25 2. Have a court, other than a small claims court, decide Disputes.
- 26 3. Serve as a private attorney general or in a representative capacity.
- 27 4. Join a Dispute I have with a dispute by other consumers.
- 28 5. Bring or be a class member in a class action or class arbitration.

1 *See id.* at pp. 4-5; *see also id.* at p. 5 (agreeing to “a waiver of class actions”).

2 Additionally, the Arbitration Clause provides that the FAA governs it. *Id.* at
3 p. 4, ¶ 22; *id.* at p. 6 (“What law applies? The Federal Arbitration Act (‘FAA’)”). It
4 also states that the Arbitration Clause will remain in effect even if Plaintiff were to
5 “cancel the Loan,” or “default, refinance, prepay, or pay the Loan in full.” *Id.* at p. 6.

6 The Loan Agreement provided Plaintiff 60 days to opt out of the Arbitration
7 Clause. *Id.* Plaintiff executed the Loan Agreement but did not opt out of the
8 Arbitration Clause. Ex. 1, Evans Decl., ¶¶ 6-9.

9 **B. Plaintiff Filed This Action Despite The Express Agreement To Arbitrate**

10 Plaintiff’s Complaint alleges that Defendant placed multiple calls and/or SMS
11 text messages to him, without prior express consent, “to collect a non-existent debt.”
12 *See* ECF No. 1, Complaint, ¶ 37. Based on this conduct, Plaintiff purports to bring
13 claims for negligent and willful violations of the TCPA on behalf of a putative class of
14 other similarly situated persons who allegedly received similar calls and/or SMS text
15 messages from Defendant. *See id.*, ¶ 74.

16 Pursuant to the terms of the Arbitration Clause, Defendant now moves to
17 compel arbitration of Plaintiff’s individual claims and dismiss the Complaint or,
18 alternatively, to stay this litigation pending arbitration and strike all class
19 allegations.

20 **III. THE COURT SHOULD COMPEL ARBITRATION**

21 **A. The FAA Applies To The Arbitration Clause**

22 As an initial matter, the FAA applies to the Arbitration Clause at issue in this
23 case. The FAA governs written arbitration agreements “evidencing a transaction
24 involving commerce.” *See* 9 U.S.C. § 2. The Supreme Court has construed this
25 phrase broadly to refer to transactions that “involve interstate commerce.” *Allied-
26 Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 279 (1995).

27 As set forth above, the Loan Agreement expressly provides that the FAA
28 governs the Arbitration Clause. Ex. 1-B, at pp. 4, 6. Further, transactions between

1 parties domiciled in different states qualify as “interstate commerce” under the FAA.
 2 *See, e.g., J.M. Woodworth Risk Retention Group, Inc. v. Uni-Ter Underwriting Mgmt.*
 3 *Corp.*, case no. 2:13-cv-0911-JAD-PAL, 2013 WL 4875098, at *5 (D. Nev. Sept. 11,
 4 2013) (“As agreements between parties domiciled in different states and operating in
 5 many states, these agreements involve interstate commerce within the meaning of
 6 the FAA.”). In this case, Plaintiff resides in Nevada, *see* ECF No. 1, Complaint, ¶ 5,
 7 whereas Defendant is a Delaware corporation with its principal place of business in
 8 Georgia, *see* Ex. 1, Evans Decl., ¶ 1. Because the parties are domiciled in different
 9 states, the FAA applies for that reason as well.

10 “Section 2 of the FAA creates a policy favoring enforcement of agreements to
 11 arbitrate.” *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008); *see*
 12 *also* 9 U.S.C. § 2. The FAA “establishes ‘a liberal federal policy favoring arbitration
 13 agreements.’” *Epic Systems Corp. v. Lewis*, __ S. Ct. ___, 2018 WL 2292444, at * 5
 14 (May 21, 2018) (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*,
 15 460 U.S. 1, 24 (1983)). Indeed, the FAA’s plain terms require a district court to
 16 compel arbitration of issues that fall within the scope of a signed arbitration
 17 agreement. *J.M. Woodworth*, 2013 WL 4875098, at *4; *see also Chiron Corp. v. Ortho*
 18 *Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000) (“By its terms, the Act ‘leaves no
 19 place for the exercise of discretion by a district court, but instead mandates that
 20 district courts *shall* direct the parties to proceed to arbitration on issues as to which
 21 an arbitration agreement has been signed.”) (quoting *Dean Witter Reynolds Inc. v.*
 22 *Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original)). “It is well established that
 23 where the contract contains an arbitration clause, there is a presumption of
 24 arbitrability.” *J.M. Woodworth*, 2013 WL 4875098, at *4 (quoting *Comedy Club, Inc.*
 25 *v. Improv West Assocs.*, 553 F.3d 1277, 1284 (9th Cir. 2009) (internal quotations
 26 omitted)). Thus, “[t]his Court’s role under the FAA is ‘limited to determining (1)
 27 whether a valid agreement to arbitrate exists and, if it does, (2) whether the
 28 agreement encompasses the dispute at issue.’” *Id.* (quoting *Chiron Corp.*, 207 F.3d at

1 1130).

2 Here, both of these requirements are met.

3 **B. A Valid and Enforceable Written Arbitration Clause Exists**

4 As set forth above and in the attached exhibits, Plaintiff was provided notice of
5 the Arbitration Clause in the Application, and the Loan Agreement prominently set
6 forth the Arbitration Clause. Ex. 1, Evans Decl., ¶ 8; Ex. 1-A; Ex. 1-B. Plaintiff
7 affirmatively agreed to the terms of the Loan Agreement—including the Arbitration
8 Clause. Ex. 1, Evans Decl., ¶ 8. Although Plaintiff had the opportunity to opt out of
9 the Arbitration Clause, he did not do so. Ex. 1, Evans Decl., ¶ 9. Accordingly, the
10 Arbitration Clause is valid and enforceable in this case.

11 **C. Plaintiff's Claims Fall within the Scope of the Arbitration Clause**

12 There is a presumption in favor of arbitration when an arbitration agreement
13 exists. *Tompkins v. 23andMe, Inc.*, 840 F.3d 1016, 1022 (9th Cir. 2016) (citing *Moses*
14 *H. Cone*, 460 U.S. at 24; *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011);
15 *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1049 (9th Cir. 1996). This
16 presumption “is particularly applicable where the [arbitration] clause is [] broad.”
17 *AT&T Techs., Inc. v. CWA*, 475 U.S. 643, 650 (1986); *see also Gen. Teamsters,*
18 *Warehouseman & Helpers Union, Local 890 v. Nat’l Refractories & Minerals*, 48 F.3d
19 1277, 1278 (9th Cir. 1995) (holding that in Ninth Circuit there is strong presumption
20 of arbitrability for arbitration clauses that are written with broad and general
21 terms); *Dennis L. Christensen Gen. Bldg. Contractor, Inc. v. Gen. Bldg. Contractor*
22 *Inc.*, 952 F.2d 1073, 1077 (9th Cir. 1991) (same); *Westinghouse Hartford Co. v.*
23 *Hanford Atomic Metal Trades Council*, 940 F.2d 513, 517 (9th Cir. 1991) (same).

24 Here, as discussed above, the Arbitration Clause’s definition of “Dispute”
25 includes, but is not limited to, “all claims and disagreements related to . . . [his]
26 dealings with [Defendant] . . . includ[ing] claims related to collections, privacy, and
27 customer information.” Ex. 1, Evans Decl.; Ex 1-B at pp. 4-5.

28 Plaintiff’s claims are premised on text messages and calls allegedly placed by

1 Defendant to Plaintiff's cell phone to collect a non-existent debt. *See* ECF No. 1,
 2 Complaint, ¶ 37. Because these claims relate to (among other aspects of the
 3 Arbitration Clause) "collections, privacy and customer information" and Plaintiff's
 4 "dealings with [Defendant]," they are plainly encompassed by the Arbitration
 5 Clause's broad scope.

6 Courts have routinely compelled arbitration of TCPA claims based on similar
 7 arbitration agreements. *See, e.g., Tate v. Progressive Finance Holdings, LLC*, Case
 8 No. 2:17-cv-01589-ODW, 2017 WL 4804354 (C.D. Cal. Oct. 24, 2017); *Miller v. Time*
 9 *Warner Cable Inc.*, Case No. 8:16-cv-00329-CAS, 2016 WL 7471302 (C.D. Cal. Dec.
 10 27, 2016); *Cayanan v. Citi Holdings, Inc.*, 926 F. Supp. 2d 1182 (S.D. Cal. 2013). The
 11 same result should obtain here.

12 **D. The Court Should Dismiss This Action**

13 Upon finding a valid arbitration agreement exists, a court may dismiss any
 14 claim subject to arbitration without prejudice pursuant to the FAA. *See, e.g., Balen*
 15 *v. Holland Am. Line Inc.*, 583 F.3d 647, 652 (9th Cir. 2009) (affirming district court's
 16 decision granting motion to compel arbitration and dismiss complaint pursuant to
 17 Rule 12(b)(3)); *Kukje Hwajae Ins. Co., Ltd. v. M/V Hyundai Liberty*, 408 F.3d 1250,
 18 1254 (9th Cir. 2005) ("A motion to enforce a forum-selection clause is treated as a
 19 motion pursuant to Federal Rule of Civil Procedure 12(b)(3)."); *Richardson v. MYW*
 20 *Holdings, LLC*, case no. 3:15-cv-00365-RCJ-WGC, 2015 WL 7185460, at *4 (D. Nev.
 21 Nov. 13, 2015) ("The Court grants Defendants' converted motion to compel
 22 arbitration. It dismisses the case and orders the parties to undergo binding
 23 arbitration in the County of Santa Clara, California as the arbitration clause
 24 dictates.").

25 Because Plaintiff's claims are subject to arbitration, the Court should dismiss
 26 this lawsuit in its entirety.

27 In the alternative, the Court should stay this proceeding while the parties
 28 complete binding arbitration. *See* 9 U.S.C. § 3. If the Court stays the action, it also

1 should strike the class allegations in Plaintiff's Complaint given Plaintiff's express
2 class action waiver in the Arbitration Clause. *See Eshagh v. Terminix Intern. Co.,*
3 *L.P.*, 588 Fed. App'x 703 (9th Cir. 2014) (affirming district court's order striking class
4 allegations when plaintiff's individual claims were compelled to arbitration).

5 **IV. CONCLUSION**

6 For the foregoing reasons, Defendant respectfully requests that the Court
7 enter an order (1) compelling Plaintiff to arbitrate his individual claims, and (2)
8 dismissing this action or, in the alternative, staying it until Plaintiff completes
9 arbitration of his individual claims, and striking all class allegations.

10 DATED this 4th day of June, 2018.

11 BALLARD SPAHR LLP

12
13 By: /s/ Lindsay Demaree
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5, I hereby certify that on June 4, 2018, a true copy of the foregoing **DEFENDANT'S MOTION TO (1) COMPEL ARBITRATION AND DISMISS, OR ALTERNATIVELY, (2) STAY PROCEEDINGS AND STRIKE ALL CLASS ALLEGATIONS** was filed via the Court's CM/ECF System and electronically served by the Court on all parties registered with the CM/ECF system in this matter.

/s/ Mary Kay Carlton
An Employee of Ballard Spahr LLP